

Project information

Project title

Regulating Arctic shipping

Year

2011/2012

Project leader

Tore Henriksen, UiT

Participants

- Professor dr. juris Tore Henriksen, Faculty of Law, University of Tromsø
- Associate Professor PhD Ingvild U. Jakobsen, Faculty of Law, University of Tromsø

Flagship

Arctic ocean

Funding Source

Fram Centre, internal: UiT

Summary of Results

Introduction

The main research question is what legal opportunities Norway has as a coastal State and a port State to promote safety and environmental protection in (international) Arctic marine shipping. International shipping in Arctic is already subjected to comprehensive multilateral regulation through IMO and ILO Conventions, such as MARPOL 73/78 and SOLAS 74. The 2009 Arctic Marine Shipping Assessment with its recommendations has proved important in the assessment of existing regulations/instruments and the development of new regulations/ instruments. The Arctic Council is implementing its recommendations, including the transfer of recommended CDEM rules and standards into binding standards through IMO, the adoption of a regional SAR agreement and identification of vulnerable areas to be protected as special areas under MARPOL 73/78.

Port state jurisdiction

The port state jurisdiction is to a limited degree restricted by IMO Conventions and the LOS Convention. As the jurisdiction is based on the territorial principle, it limits the right to regulate activities in areas beyond national jurisdiction. It may be done when the port State has specific legal basis, such as LOS Convention Article 218, if the vessel has been involved in illegal discharges in areas of the high seas or under jurisdiction of other coastal states. The alternative is to refuse vessels access to Norwegian ports. The port State has more extensive jurisdiction to establish national requirements on CDEM rules and standards for foreign vessels. However, such regulations may be more problematic under international law, as the requirements in questions are not relevant for the vessels while navigating through Norwegian waters.

Coastal state jurisdiction

The coastal state jurisdiction is broad, with the exception of CDEM standards, to adopt national regulations to ensure maritime safety and protection of the marine environment in the territorial sea. In the EEZ, this competence is much more limited as the coastal State may only adopt regulations that comply with GAIRES. With regard to the enforcement jurisdiction, the coastal State has limited possibilities to enforce violations of shipping regulations. This is particular the case in the EEZ.

Analyses

The analyses undertaken in this report suggest that there is widespread agreement among Arctic states (including Norway) that the particular Arctic shipping regulations should be developed through multilateral instruments of IMO. They may provide adequate regulation of Arctic shipping. In order for these regulations to be implemented, both coastal State and port State involvement is required. The interplay between these multilateral instruments and the particular environmental jurisdiction of the coastal States in ice-covered areas are unclear. Norway has extensive jurisdiction over foreign vessels voluntarily in its ports; particularly concerning CDEM requirements going beyond the regional port control schemes. The extra-territorial effects of the measures may limit and affect their design. The goal-based standards of SOLAS 74 may provide adequate basis for the port State.

The main challenge, whether the measures are unilaterally or multilaterally based, is the need for the port State to have information on vessels operating in, to or from the Arctic waters. Neither the port State control schemes nor IMO regulation provides the port State with comprehensive and reliable information on the previous or next port of call. In order for port State control to be effective such information should be made available. The limited prescriptive jurisdiction Norway as a coastal State has to adopt national regulations it finds necessary in the EEZ, limits the possibility to protect certain, environmental sensitive areas from the impacts of shipping. The adoption of operational requirements that qualify as GAIRAS also often relies on the endorsement of IMO. Moreover, coastal States are under international environmental law, such as CBD, required to protect marine biodiversity through the use of area-based protective measures, such as MPAs, whereby shipping is also regulated. To comply with these obligations, in particular if the MPAs extend into the EEZ, it is necessary to use the special legal mechanisms LOSC 211 (6), MARPOL Special Areas or PSSA. These legal instruments all require cooperation with and the endorsement of IMO. To be able to unilaterally adopt measures to protect the sensitive maritime areas around Svalbard against the impacts from Arctic shipping,

Norway should adopt an EEZ outside Svalbard to supplant the fisheries protection zone. This would provide Norway with the legal opportunities to adopt stricter CDEM rules or other navigational standards than those available as GAIRAS and in that way ensure safe shipping and environmental protection of this sensitive maritime area. The practice from Russia and Canada investigated in this report illustrates how Article 234 may provide a legal basis for restricting navigation or requiring specific CDEM standards to ensure that the vessel is capable to meet the particular conditions in the ice-covered areas.

Published Results/Planned Publications

The report is planned published in the Report Series of the Polar Institute and parts of it will be included in articles in academic journals.

Communicated Results

Not yet undertaken. There are plans to present the report for the Ministry of foreign affairs and at the public launch of the flagship.

Interdisciplinary Cooperation

Parts of the report were supplemented by researchers at Marintek, Trondheim.

Budget in accordance to results

The Fram Centre funding was helpful in completing the project. The project also had funding from the Faculty of Law, University of Tromsø and did not receive any other external funding.

Could results from the project be subject for any commercial utilization

No

If Yes

May be used in decision-making processes in private and public sector.

Conclusions

The report will be the basis for further research and investigation into Arctic marine shipping and the need for further legal regulation, under this Fram flag ship.